



**Andrew Nocella**  
EVP, Chief Commercial Officer

May 31, 2022

The Honorable Annie Petsonk  
Principal Deputy Assistant Secretary for Aviation & International Affairs  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Mr. Bradley Mims  
Deputy Administrator  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591

**Docket: DOT-OST-2021-0103**

Dear Ms. Petsonk and Mr. Mims,

United Airlines, Inc. appreciates the opportunity to correct the record in response to the inaccuracies in the letters submitted to the Department of Transportation and the Federal Aviation Administration by JetBlue Airways and Spirit Airlines.<sup>1</sup> United is compelled to respond to JetBlue's and Spirit's self-serving statements that fundamentally distort FAA's Level 2 process at Newark Liberty International Airport ("EWR") and falsely criticize United's operations there. As explained in detail below, Spirit and JetBlue are attempting to gloss over unsanctioned operational practices at EWR to further their own commercial objectives, and are making a mockery of FAA's authority and responsibility to safely and efficiently manage the airspace around the most delay-challenged airport in the national airspace system ("NAS").<sup>2</sup> JetBlue and Spirit are creating a crisis at EWR and customers, especially United's customers, are bearing the frustrations and the costs of the carriers' reckless disregard for all other operations at the airport.

Newark is historically the most delay-prone airport in the NAS. FAA is using the tools at its disposal under the Level 2 schedule facilitation process, including identifying a cap of 79 scheduled operations per peak-hour as the *maximum* number of movements (a combination of the total number of departures and arrivals planned by carriers in advance) that the airport can handle in optimal operating conditions.<sup>3</sup> FAA's Level 2 process relies on the *voluntary cooperation* of carriers,

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<sup>1</sup> See JetBlue's letter of May 9, 2022, and Spirit's letter of May 11, 2022.

<sup>2</sup> FAA's mission is "to provide the safest, most efficient aerospace system in the world." See 49 U.S.C. sec. 40103(b)(1); see also FAA Mission Statement, available at: <https://www.faa.gov/about/mission>.

<sup>3</sup> As is the case on a near daily basis at EWR, when less than optimal conditions exist (such as weather, gate congestion, airfield construction, and more scheduled flights than the airport can handle in any given period), FAA must implement air traffic control procedures such as ground stops, additional distance between aircraft, airborne holding, and even diversions, to maintain a safe environment. This combination of limited airfield capacity on the ground to begin with,

through the direction and management of the FAA to match schedules with available capacity. United is cooperating with FAA and operating only FAA-approved flights with FAA-issued Reference IDs. Unfortunately, JetBlue and Spirit (and, possibly, other carriers) are not, and their operation of flights over the peak-hour cap is making the congestion and delay problem at EWR worse. The traveling public, FAA air traffic controllers, and airport employees at EWR bear the brunt of the effects of JetBlue's and Spirit's operations above the capacity cap of 79 movements per peak-hour.<sup>4</sup> United implores the Secretary to take more aggressive steps and clearly communicate those steps to protect EWR passengers from avoidable delays and preserve the optimal functionality of the airport.

The current situation is simple: United is operating the same number of peak-hour flights this summer that it operated at EWR for over the past five years, all of which are approved by FAA and assigned a specific Reference ID.<sup>5</sup> JetBlue and Spirit, on the other hand, have scheduled new flights over what they operated before the pandemic. While, initially, FAA may have approved these operations during the height of the pandemic when other carriers reduced their operations under the COVID-19 waivers, JetBlue and Spirit are continuing to schedule or operate *ad hoc* movements – despite the carriers having resumed their own operations, and despite the FAA having warned carriers that *ad hoc* movements “do not provide any assurance of priority in the next corresponding season.”<sup>6</sup> Spirit, in particular, has effectively declared itself the winner of the Department's pending reassignment of former Southwest movements and is currently operating 19 movements during EWR peak hours above their prior operations – on top of the already maxed-out capacity of the airport. Given Spirit's and JetBlue's actions, one must question why the Department is going through the EWR reassignment process because any carrier, whether or not ultimately awarded the former Southwest Airlines' movements, may apparently add the flights without consequences from FAA. In fact, other carriers are following JetBlue's rhetoric and Spirit's actions to add unapproved flights during the afternoon peak.

**United is following FAA's Level 2 process at EWR and JetBlue and Spirit are not.**

FAA has designated EWR as a Level 2 schedule-facilitated airport and imposed an enhanced management process, as compared to other U.S. Level 2 airports, that relies on the voluntary cooperation of carriers operating at EWR. The FAA has assessed the airport's capability and established a cap of 79 operations per peak hour in furtherance of its statutory mission to provide the “safest, most efficient” airspace system in the world. United does not operate any regularly scheduled flight at EWR unless it is approved by FAA and has an associated FAA-issued “Reference ID.”<sup>7</sup> In late 2019 and at FAA's request, United re-timed many peak-hour operations in an effort to reduce congestion<sup>8</sup> bringing all hours within the published FAA hourly, half-hourly and

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coupled with mandate to safely manage the airspace to the conditions on any given day, routinely results in more and longer delays, missed connections, cancellations, and passenger inconvenience than at any other airport.

<sup>4</sup> United is grateful for the extraordinary efforts of FAA's air traffic controllers and of United's employees who serve on the front line at EWR and make the airport work as well as it can under challenging and dynamic conditions.

<sup>5</sup> A “Reference ID” is a number assigned by FAA to a movement by 30-minute period for both arrival and departures at EWR for administrative tracking purposes.

<sup>6</sup> FAA's admonition on *ad hoc* movements was most recently stated in FAA, COVID-19 Relief Concerning International Operations at...Newark Liberty International Airport...for the Summer 2022 Scheduling Season, 87 Fed. Reg. 11805, 11809 (March 2, 2022).

<sup>7</sup> Contrary to the position taken by other carriers, United has never viewed its compliance with FAA's request to implement Reference IDs as “arbitrary” or “when convenient.”

<sup>8</sup> The pre-pandemic annual cost of lost passenger time from delays at EWR alone was approximately \$1.1 billion in 2019, while the ripple effects of EWR's congestion contributed significantly to a staggering \$33 billion nationwide

arrival/departure specific capacity limits. However, those re-timings and their corresponding congestion mitigation benefits have been undone by Spirit's additional flights and by carriers scheduling flights at alternate times, pushing operations above the published FAA capacity limits.

When carriers disregard the FAA process and plan schedules that exceed the cap, it undermines the efficient and effective operation of the airport and creates congestion and delay that adversely affect all carriers and their customers – including the customers of Spirit and JetBlue. However, United and its customers are collateral damage to these carriers' inappropriate actions and are uniquely harmed because United operates a hub at EWR that connects domestic with international flights.

United has long advocated against re-designating EWR as a Level 3 airport but only if FAA can maintain safe and efficient operations at EWR under the Level 2 process. Summer 2022 schedules cast doubt on whether that is possible. However, one thing is certain: when carriers – most notably Spirit – plan their schedules without regard to FAA's capacity cap and Reference ID process, there will be an unacceptable level of delays. United remains committed to cooperating with FAA and acting as a responsible carrier at EWR. It simply asks other carriers to do the same.

**By taking these actions, JetBlue and Spirit are thumbing their noses at FAA's Level 2 management of EWR.**

Both carriers claim they are cooperating with FAA yet fail to acknowledge their excess operations at EWR. JetBlue highlights that it has an "exemplary record" on EWR congestion by "attempting to cooperate" with the agency.<sup>9</sup> It also disingenuously claims that it is *temporarily* drawing its operations down at EWR due to the airport's construction projects – which have been ongoing for some time now – rather than due to its recent inability to field its schedule that led to a systemwide operational meltdown acknowledged by its senior management in its recent earnings call.<sup>10</sup> Even a casual observer can see that JetBlue's operational problems are not limited to EWR. But JetBlue's comments in their recent letter about the Level 2 process should raise concerns for the FAA.

JetBlue apparently believes that a carrier is "free to add flights at EWR...just as they would at any other Level 1 airport." This is not true in light of the unique operating process at EWR, exemplified by FAA's scheduling notices, and its administration of Reservation IDs.<sup>11</sup> JetBlue's statement is a shot across FAA's bow, telegraphing JetBlue's dismissive view of FAA's Level 2 process and its disregard for the voluntary cooperation that is the hallmark of Level 2 implementation at EWR. Unless its position changes, JetBlue is leaving the FAA with no alternative but to return EWR to Level 3 in order to maintain safe and efficient operations at the airport.

**United is committed to working with FAA to make EWR work as a Level 2 airport, but can't do it alone.**

United has every commercial incentive to be efficient at EWR and its network depends on that efficiency. Spirit alleges that United operates with "reckless inefficiency" at EWR. Contrary to Spirit's implication that United operates too many flights at EWR, United has more scheduled

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economic cost that year, by the FAA's own calculations, due to flight congestion-related losses. See DOT, *Reassignment of Schedules at Newark-Liberty International Airport*, Docket DOT-OST-2021-0103, Comments of United Airlines, Inc. (filed Sept. 27, 2021) (hereinafter "Comments of United Airlines"), Exhibit A (Compass Lexecon Study) at 2, 3.

<sup>9</sup> See JetBlue Letter at 3.

<sup>10</sup> See Spirit Letter at 1.

<sup>11</sup> See WSG Version 10 at Chapter 4, p. 50, available at:

<https://www.iata.org/contentassets/4ede2aabfcc14a55919e468054d714fe/wsg-edition-10-english-version.pdf>.

flights than any other carrier at EWR because it is its principal East Coast hub. Incredibly, JetBlue states that United “appears to have specifically taken steps to worsen operations at EWR” and that United is engaged in a “thinly guised attempt to persuade FAA into believing it necessary to shift EWR back to Level 3.” First, United would never deliberately handicap its principal East Coast hub and intentionally cause our customers to endure the myriad negative effects of congestion and delay. JetBlue suggests that United is executing a grand scheme to the detriment of its customers and the traveling public in order to convince FAA to re-designate EWR as a Level 3 (slot-controlled) airport. This is not true. EWR’s performance would improve if all carriers complied with FAA’s Level 2 management process, including flying only FAA-approved schedules within the published capacity limits and with FAA-issued Reference IDs. Ironically, it is the actions of JetBlue and Spirit, including their intention to operate flights without FAA approval this Summer and Fall, that are most likely to cause the FAA to re-designate EWR as a Level 3 airport. Second, United has and will continue to work to increase the efficiency and throughput of EWR. For example, United prepaid \$72 million dollars in flight fees to enable the Port Authority of New York and New Jersey to rebuild a runway in 2021 during a time of reduced demand because of the pandemic. Interestingly, JetBlue opposed this project, preferring to push disruptive construction to the summer of 2022 when it would more substantially impact passengers.

Spirit would have the Department believe that, because United flies within the FAA-approved schedule at EWR, it receives some “arbitrary” competitive advantage that should be somehow rectified by Spirit adding more flights at its discretion. Spirit seems to be suggesting that, because it claims to be a low-cost leisure carrier, it can overfly the peak-hour caps at EWR with impunity. Both carriers exaggerate the importance of the *Spirit v. FAA* case and use it as an excuse to flout the Level 2 process at EWR. That case, to which United was not a party, dealt with a relatively narrow issue: whether FAA sufficiently documented and adequately reasoned its interim decision not to reassign the movements vacated by Southwest Airlines at EWR. It is not a free pass for low-cost carriers to defy FAA’s policies and processes.<sup>12</sup> To be clear, and as it has consistently stated, United does not object to the reassignment of the Southwest Airlines Reference IDs as long as the reassignment does not cause operations to exceed the 79 per peak-hour cap.

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In conclusion, United is proud of its EWR hub and rejects the notion that there is something sinister about it having a large number of flights there. To the contrary, United is connecting New Jersey, the New York region, the United States, and the world through EWR and submits that the public interest is furthered by the many benefits of its hub.<sup>13</sup> United intends to continue to work with the Department, FAA, and the PANYNJ to maximize the efficiency of EWR. For the sake of transparency for all interested parties, United also renews its request that FAA publish all of the Reference IDs it has issued at EWR by carrier by hour. At the same time, United will continue to abide by FAA’s Level 2 management process at EWR as requested by you, our regulator. Whether it is technically voluntary or not, other carriers should do the same so EWR can continue to operate

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<sup>12</sup> United adopts and reiterates its previously filed comments about the flaws in the decision. See Comments of United Airlines, *supra* note 8.

<sup>13</sup> United’s EWR hub supports a wide range of long-haul international service not offered by any other U.S. carrier from metro-NYC airports, including flights between Newark and destinations in Europe, Asia, Africa, India, the Middle East, and South America. This means United’s unique hub services at EWR provide significant benefits to New Jersey and the metro-NYC area through tourism, business travel, and cultural exchange – in pre-pandemic years, international tourism and visitors contributed more than \$20 billion to area economies.

under the Level 2 framework in furtherance of the FAA's mission to provide the "safest, most efficient" airspace in the world.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Putnam', written in a cursive style.

cc: The Honorable John Putnam  
Mr. Billy Nolen  
Mr. Marc Nichols  
Mr. Tim Arel